

WINTHROP, STIMSON, PUTNAM & ROBERTS

1133 CONNECTICUT AVENUE, N.W.
WASHINGTON, DC 20036
TELEPHONE: 202-775-9800
TELEFAX: 202-833-8491

695 EAST MAIN STREET
STAMFORD, CT 06904-6760
TELEPHONE: 203-348-2300
TELEFAX: 203-965-8226

125 WORTH AVENUE
PALM BEACH, FL 33480
TELEPHONE: 407-655-7297
TELEFAX: 407-833-6726

ONE BATTERY PARK PLAZA
NEW YORK, NY 10004-1490

TELEPHONE: 212-858-1000
TELEFAX: 212-858-1500
TELEX: 62854 WINSTIM

2 THROGMORTON AVENUE
LONDON EC2N 2DL ENGLAND
TELEPHONE: 011-44171-628-4931
TELEFAX: 011-44171-638-0443

RUE DU TACITURNE 42
B-1000 BRUSSELS, BELGIUM
TELEPHONE: 011-322-230-1392
TELEFAX: 011-322-230-9288

6-7, ATAGO 1-CHOME
MINATO-KU, TOKYO 105, JAPAN
TELEPHONE: 011-813-3437-9740
TELEFAX: 011-813-3437-9261

2505 ASIA PACIFIC FINANCE TOWER
CITIBANK PLAZA
3 GARDEN ROAD, CENTRAL, HONG KONG
TELEPHONE: 011-852-2530-3400
TELEFAX: 011-852-2530-3355

HOWARD GOLDMAN
212-858-1522

March 5, 1997

U.S. House of Representatives
Committee on Commerce
Room 2125, Rayburn House Office Building
Washington, DC 20515

Re: Testimony Before Subcommittee on
Finance and Hazardous Materials,
3/7/97, City Hall, New York, NY

Mr. Chairman and Members:

Thank you for this opportunity to testify at this oversight hearing of the Committee on Commerce, Subcommittee on Finance and Hazardous Materials regarding implementation of the Federal Superfund program and its relationship to brownfields in New York.

I am appearing today as an individual land use attorney practicing in New York City. By way of background, I was the Deputy Counsel to the New York City Planning Commission from 1980 to 1983, where I helped to set up the City's Environmental Quality Review program and coordinate the efforts of a number of City agencies in the environmental assessment area. Since 1983, I have been in private law practice and have had the good fortune to work a wide array

March 5, 1997

of development projects, primarily on behalf of the developers. My appearance today is not, however, on behalf of any particular developer or project, but as someone who is concerned about both the environment and the economic health of New York City.

The main point I want to make is how important brownfields are about to become in New York City. I say about to because, until now, I think this issue has been a sleeper. But not for much longer.

New York City was colonized by the Dutch as a place of commerce and has been industrialized for over 100 years. Because of its relative compactness and density, virtually every site has the potential to be a brownfield site. By this I mean that every site has the potential to have some degree of on-site contamination, by virtue of past uses on the site or on neighboring sites, that affects its development potential.

Such contamination typically takes the form of soil contamination, groundwater contamination, and contamination by lead, asbestos, mercury or other industrial by-products inside existing buildings.

The chances of finding contaminated sites is greatest in areas that are zoned for manufacturing use. In 1961, the City Planning Commission rezoned the entirety of the City based on existing and expected land use demands. Of

March 5, 1997

a total of 95,000 acres that were set aside for residential, commercial and industrial use, 18,000 acres, representing almost 20% of the total, was devoted to manufacturing. This was almost twice as much land as was set aside for commercial use at the time.

This allocation was based on the economic realities of the 1950's, and the expectation that manufacturing would continue to be the major economic force in the City. However, as we all know, manufacturing activity has been on a steady decline in New York City since the 1960's, while service and other commercial uses have been on the rise.

As a result of this macro-economic trend, large tracts of manufacturing areas of the City now stand vacant or underutilized. It is estimated that perhaps 3,500 acres are vacant and another 3,500 acres are occupied with vacant or underutilized buildings. In a City as developed as New York, this is a lot of land, and a lot of lost opportunity in terms of economic development, jobs and tax revenues.

In recognition of this fact, the current City administration has made the revitalization of manufacturing areas its major land use priority. It is attempting to accomplish this in a number of ways.

First, it recently proposed a zoning change that would have permitted large retail uses, or "big boxes", to locate in manufacturing districts without the need for

March 5, 1997

discretionary City land use approvals. Although this proposal was recently defeated at the City Council, I expect it will come back soon.

Second, the Department of City Planning is working on zoning amendments to encourage institutional uses, known as community facilities, to locate in manufacturing districts where they are currently prohibited. These include educational, health and social services facilities.

Third, the Department is also working on zoning amendments to permit residential and light manufacturing uses to coexist in certain areas, where such coexistence would not be detrimental to either use. The Red Hook section of Brooklyn is one example of an area that is a potential mixed-use area.

Finally, the City has not given up on manufacturing uses, and looks forward to a revival of small manufacturing in the multi-media and high-technology areas, activities involving recycling and the use of recycled materials, and high-end manufacturing of specialty items such as jewelry and clothing.

For these reasons, I believe that manufacturing areas are likely to become the focus of intensive development activities in the near future. When that happens, the issues of how to deal with contamination will become increasingly critical.

March 5, 1997

The greatest problem facing a developer with a contaminated site today is certainty. Development thrives on certainty -- budget and schedule -- and abhors uncertainty. How can a developer finance a project if he or she doesn't know how much it will cost and when it will be constructed? How can a tenant commit to space without knowing these facts? How can a lender advance funds?

The current situation with respect to contaminated sites lends itself more to uncertainty than to certainty. If contamination is found, three levels of government are potentially involved -- local, state and federal -- with very little coordination among them. One of the questions I most frequently hear from clients is whom do I have to talk to about this -- the City, State or EPA?

A second, related problem involves the lack of uniform standards for determining when a site must be cleaned up and to what degree. It is impossible to schedule and budget a cleanup if you don't know if it will be required and to what standard you are cleaning up to. Very few projects have the luxury of taking several months or years to make these determinations, assuming it is even possible to establish this with any degree of certainty.

A third problem, and one I am sure you all are familiar with, is the potential for joint, several and

March 5, 1997

retroactive liability for owners and operators under the Superfund statute.

At this point, and somewhat to my surprise, I have not found contamination issues to be a major impediment to development projects in the City. I believe this is because most of the sites I work on are located in commercial or residential zoning districts, and not manufacturing areas. However, as the focus shifts to these areas, I am certain that environmental issues will become increasingly important and troublesome.

It is, therefore, commendable that this Subcommittee is taking the time to assess the situation now, rather than waiting until the problems have erupted. The areas where I believe some good can be done are as follows:

- . Continued funding of local pilot brownfield programs, such as the one the City is currently undertaking. The very act of having City, State and Federal officials sit down with developers, lenders, consultants and community groups to address the issues is a remarkable achievement, and one that will undoubtedly result in increased communication and coordination. Although the City's program is directed at the more contaminated sites, I believe that what is learned from the program will benefit many less contaminated sites. The program may also yield a consensus for risk-based

March 5, 1997

standards, which would define cleanup goals based on the actual or proposed use of a site.

. Continue with legislative efforts to reform Superfund, particularly with regard to limiting the potential for unlimited liability. In this regard, I support the goals of Mr. Greenwood's bill to protect bona fide prospective purchasers and innocent landowners from Superfund liability. This will encourage developers and lenders to get more involved with sites in manufacturing districts. However, in order for this to work, the levels of contamination at which cleanup will be required, and the levels which cleanup must achieve, must be very clearly spelled out, so that developers and lenders can have the certainty necessary in the real estate business.

. As a final and perhaps speculative notion, the Subcommittee should give some thought to implementing a self-certification process, whereby properly qualified consultants can determine whether a site needs to be remediated and, if so, to what degree, without lengthy reviews by government agencies.

Respectfully,

A handwritten signature in dark ink, appearing to read "Howard Goldman", written over the typed name.

Howard Goldman

SUMMARY OF POINTS

- DEVELOPMENT OF MANUFACTURING SITES WILL INCREASE
- UNCERTAINTIES WITH RESPECT TO HOW TO HANDLE
CONTAMINATION WILL BECOME INCREASINGLY PROBLEMATIC
- POTENTIAL SOLUTION: LOCAL BROWNFIELD PROGRAMS
- POTENTIAL SOLUTION: SUPERFUND REFORM -- GREENBERG BILL
- POTENTIAL SOLUTION: SELF-CERTIFICATION BY QUALIFIED
PROFESSIONALS